

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670
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FILED

FEB 12 2016
BUREAU OF REAL ESTATE
By B. Nicholas

6 BEFORE THE BUREAU OF REAL ESTATE
7 STATE OF CALIFORNIA

8 * * *

9 In the Matter of the Accusation of)
10)) NO. H-6284 SAC
11 KELLY WYLER,))
12)) STIPULATION AND AGREEMENT
13)) IN SETTLEMENT AND ORDER
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Respondent.

It is hereby stipulated by and between Respondent KELLY WYLER (herein "Respondent") and the Complainant, acting by and through Mary F. Clarke, Counsel for the Bureau of Real Estate (herein "Bureau"), as follows for the purpose of settling and disposing the Accusation filed on July 16, 2015, in this matter (herein "Accusation"):

- 1) All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (herein "APA"), shall instead and in place thereof be submitted on the basis of the provisions of this Stipulation and Agreement in Settlement and Order (herein "Stipulation").
- 2) Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA, and the Accusation filed by the Bureau in this proceeding.
- 3) A Notice of Defense was filed on July 30, 2015, by Respondent pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations

1 in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
2 Respondent acknowledges he understands that by withdrawing said Notice of Defense he will
3 thereby waive his rights to require the Real Estate Commissioner (herein "Commissioner") to
4 prove the allegations in the Accusation at a contested hearing held in accordance with the
5 provisions of the APA and that he will waive other rights afforded to him in connection with the
6 hearing such as the right to present evidence in defense of the allegations in the Accusation and
7 the right to cross-examine witnesses.

8 4) Respondent, pursuant to the "Determination of Issues" set forth below, hereby
9 admits that the factual allegations, in the Accusation filed in this proceeding are true and correct
10 and the Commissioner shall not be required to provide further evidence of such allegations.

11 5) It is understood by the parties that the Commissioner may adopt this
12 Stipulation as his decision in this matter thereby imposing the penalty and sanctions on
13 Respondent's real estate license and license rights as set forth in the below "Order." In the event
14 the Commissioner in his discretion does not adopt this Stipulation, it shall be void and of no
15 effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under
16 all the provisions of the APA and shall not be bound by any admission or waiver made herein.

17 6) The "Order" or any subsequent Order of the Commissioner made pursuant to
18 this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or
19 civil proceedings by the Bureau with respect to any matters which were not specifically alleged to
20 be causes for accusation in this proceeding.

21 7) Respondent understands that by agreeing to this Stipulation, Respondent
22 agrees to pay, pursuant to Section 10148 of the California Business and Professions Code (herein
23 "Code"), the cost of the audit which resulted in the determination that Respondent committed the
24 violations found in the "Determination of Issues" below. The amount of said cost is \$3,195.93.

25 8) Respondent understands that by agreeing to this Stipulation, the findings set
26 forth below in the "Determination of Issues" become final, and that the Commissioner may
27 charge Respondent for the cost of any audit conducted pursuant to Section 10148 of the Code to

1 determine if the trust fund violations found in the "Determination of Issues," below, have been
2 corrected. The maximum cost of said audit shall not exceed \$3,195.93.

3 9) Respondent further understands that by agreeing to this Stipulation,
4 Respondent agrees to pay, pursuant to Section 10106(a) of the Code, investigative and
5 enforcement costs of \$1,417.85 which led to this disciplinary action.

6 DETERMINATION OF ISSUES

7 The acts and/or omissions of Respondent as described in the Accusation are
8 grounds for the suspension or revocation of the license and license rights of Respondent under
9 the following provisions of the Code and/or Chapter 6, Title 10, California Code of Regulations
10 (herein "Regulations"):

- 11 (a) as to Paragraph 6(a) under Section 2832.1 of the Regulations in
12 conjunction with Section 10177(d) of the Code;
- 13 (b) as to Paragraph 6(b) under Section 10145 of the Code and Section 2832
14 of the Regulations in conjunction with Section 10177(d) of the Code;
- 15 (c) as to Paragraph 6(c) under Section 2831.2 of the Regulations in
16 conjunction with Section 10177(d) of the Code; and
- 17 (d) as to Paragraph 6(d) under Section 10177(g) of the Code.

18 ORDER

19 All license and licensing rights of Respondent under the Real Estate Law are
20 suspended for a period of 60 days from the effective date of this Decision; provided, however,
21 that:

22 1) 30 days of said suspension shall be stayed, upon the condition that
23 Respondent petition pursuant to Section 10175.2 of the Code and pays a monetary penalty
24 pursuant to Section 10175.2 of the Code at a rate of \$100.00 per day for a total monetary penalty
25 of \$3,000.00.

26 a) Said payment shall be in the form of a cashier's check made payable
27 to the Bureau of Real Estate. Said check must be delivered to the Bureau of Real Estate,

1 **Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of**
2 **this Decision.**

3 b) No further cause for disciplinary action against the Real Estate license of
4 Respondent occurs within two (2) years from the effective date of the Decision in this matter.

5 c) If Respondent fails to pay the monetary penalty in accordance with the
6 terms and conditions of this Decision, the suspension shall go into effect automatically.

7 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money
8 paid to the Bureau under the terms of this Decision

9 d) If Respondent pays the monetary penalty and any other moneys due under
10 this Stipulation and if no further cause for disciplinary action against the real estate license of
11 Respondent occurs within two (2) years from the effective date of this Decision, the entire stay
12 hereby granted pursuant to this Decision shall become permanent.

13 2) 30 days of said suspension shall be stayed for two (2) years upon the
14 following terms and conditions:

15 a) Respondent shall obey all laws, rules and regulations governing the rights,
16 duties and responsibilities of a real estate licensee in the State of California; and,

17 b) That no final subsequent determination be made, after hearing or upon
18 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
19 date of this Decision. Should such a determination be made, the Commissioner may, in his
20 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
21 suspension. Should no such determination be made, the stay imposed herein shall become
22 permanent.

23 3) All licenses and licensing rights of Respondent are indefinitely suspended
24 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
25 successfully completed the continuing education course on trust fund accounting and handling
26 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
27 satisfaction of these requirements includes evidence that Respondent has successfully completed

1 the trust fund account and handling continuing education courses, no earlier than 120 days prior
2 to the effective date of the Decision in this matter. **Proof of completion of the trust fund**
3 **accounting and handling course must be delivered to the Bureau of Real Estate, Flag**
4 **Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to**
5 **the effective date of this Decision.**

6 4) Pursuant to Section 10148 of the Code, Respondent shall pay the sum of
7 \$3,195.93 for the Commissioner's cost of the audit which led to this disciplinary action.
8 **Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from**
9 **the Commissioner.** Payment of audit costs should not be made until Respondent receives the
10 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,
11 Respondent's real estate license shall automatically be suspended until payment is made in full,
12 or until a decision providing otherwise is adopted following a hearing held pursuant to this
13 condition.

14 5) Pursuant to Section 10148 of the Code, Respondent shall pay the
15 Commissioner's reasonable cost, not to exceed \$3,195.93, for an audit to determine if
16 Respondent has corrected the violations found in the "Determination of Issues." In calculating
17 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
18 average hourly salary for all persons performing audits of real estate brokers, and shall include an
19 allocation for travel time to and from the auditor's place of work. **Respondent shall pay such**
20 **cost within sixty (60) days of receiving an invoice therefore from the Commissioner.**
21 Payment of the audit costs should not be made until Respondent receives the invoice. If
22 Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's
23 real estate license shall automatically be suspended until payment is made in full, or until a
24 decision providing otherwise is adopted following a hearing held pursuant to this condition.


25 6) All licenses and licensing rights of Respondent are indefinitely suspended
26 unless or until Respondent pays the sum of \$1,417.85 for the Commissioner's reasonable cost of
27 the investigation and enforcement which led to this disciplinary action. Said payment shall be in

1 the form of a cashier's check made payable to the Bureau of Real Estate. **The investigative and**
2 **enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box**
3 **137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision.**

4 7) Respondent shall, **within six (6) months from the effective date of this**
5 **Decision**, take and pass the Professional Responsibility Examination administered by the
6 Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy
7 this condition, Respondent's real estate license shall automatically be suspended until
8 Respondent passes the examination.

9
10 12-29-15

11 DATED


11 
12 MARY F. CLARKE, Counsel
13 Bureau of Real Estate

13 * * *

14 I have read this Stipulation and its terms are understood by me and are agreeable
15 and acceptable to me. I understand that I am waiving rights given to me by the California APA
16 (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government
17 Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of
18 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I
19 would have the right to cross-examine witnesses against me and to present evidence in defense
20 and mitigation of the charges.

21
22 11-24-2015

23 DATED

23 
24 KELLY WYLER
25 Respondent

25 * * *

26 The foregoing Stipulation and Agreement in Settlement and Order is hereby
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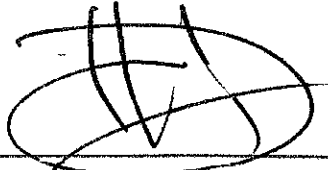
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adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

MAR 04 2016

IT IS SO ORDERED February 5, 2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner